IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 273 OF 2001

Shri. Dipak R. Dalal,
Aged 42 years, Occ. Business,
Indian Inhabitant of
Ahmedabad,
having address at 102
1st Floor, Hiko Building,
1 Hariac Park,
Naurangpura, Ahmedabad ...Petitioner

Versus

1. Dr. Piyus T. Mehta,
Aged 47 years, Occ. Business,
Indian Inhabitant of Mumbai,
Managing Director of
North Star Gems (I), Ltd.,
a Company incorporated
under the Companies
Act, 1956 having its
office at 23 Anupam
Apartment, St. Francis
Cross Road, Vile Parle (W)
Bombay 400 056.

2. The State of Maharashtra,
at the instance of G.B.C.B.
C.I.D., Mumbai, Police
Commissioner's Compound,
Mumbai - 400 001. ...Respondents.

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Shri. Nusrat Shah with Eva Almida Priyachalka with Makrand S. Narwekar i/b Smt. Naazish N. Shah, Advocates for the petitioner/

Shri. Prakash Naik, Advocate for respondent No.1.

Shri. A.S. Shitole, A.P.P. for Respondent No.2.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATE OF RESERVING
THE JUDGMENT : 27.10.2004

DATE OF PRONOUNCING

THE JUDGMENT : 3.11.2004

ORAL JUDGMENT:-

1. Heard Mr. Shah, learned advocate for the petitioner, Mr. Naik, learned advocate for respondent No.1 and Mr. Shitole, learned A.P.P. for respondent No.2-State.

2. The petitioner who is the original accused No.5 in case No. 411/Misc/97 pending before the Court of Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai, has preferred this writ petition for quashing the complaint No. 411/Misc/97 and the order of investigation passed by the learned Magistrate under Section 156(3) of Cr.P.C. Consequent to the said order the case was registered as MECR No. 4/97 at V.P. Road police station, Mumbai.

3. The complaint No. 411/Misc/97 was filed by the respondent no.1 Dr. Piyus Mehta against the petitioner and six other accused. The said complaint was U/sec. 403, 409, 420, 471 r.w.114, 120-B and 34 of I.P.C. The said complaint had been referred by the learned Magistrate to V.P. Road police station under section 156(3) of Cr.P.C. for investigation. On 8.12.99 the complainant i.e. the respondent No.1 presented an application

stating therein that proper investigation has not been made by V.P. road police station in the said case and hence direction be given to investigate thoroughly and to take appropriate steps for collection of evidence and arresting the accused. Thereupon, an explanation was called for from the Investigating Officer of V.P. Road police station. One report had been submitted by the concerned investigating officer in which it is stated that all cause of action has taken place in Ahmedabad City, Gujrat State and hence, it is not proper for V.P. road police station to take cognizance and send charge sheet as accused Nos. 1, 2 and 3 hae committed the offence in Ahmedabad. One further report had been submitted on 16.2.2000 by the Senior Inspector of V.P. road police station stating that no matter be sent for further investigation to them.

4. The learned Magistrate relying on the decision of the Supreme Court in the case of **Satvinder Kaur Vs. State [1999 (4) Crimes 157 (SC)]** by order dated 19.4.2000 directed the Senior Inspector of V.P. road police station to make further investigation and take necessary action as required under the law and the papers were sent to the V.P. road police station. Hence, the present writ petition has been filed. Rule came to be granted

in this petition on 18.7.2002. So also interim relief came to be granted whereby the proceedings relating to the case and the order of investigation of the learned Magistrate came to be stayed.

5. On behalf of the petitioner it is submitted that all the transactions were done by the petitioner at Ahmedabad. A bank account had been opened by the complainant at Ahmedabad. All the witnesses including the bank officials are residents of Ahmedabad. Thus, as the cause of action took place at Ahmedabad in Gujrat, Mumbai police cannot take cognizance of the case, hence, it is prayed that Criminal complaint be quashed and the order of the learned Magistrate directing further investigation under Section 156(3) of Cr.P.C. be quashed and set aside.

6. Shri. Shah, the learned advocate for the petitioner has placed reliance on the decision of the Supreme Court in the case of **Navinchandra N. Majithia Vs. State of Maharashtra & Ors. reported in (2000) 7 SCC 640,** wherein it is observed that the High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. Mr. Shah has submitted that in the present case no part of the cause of action

has arisen within the territorial limits of this Court and hence, the police and Magistrate would have no jurisdiction to investigate the case and the learned Magistrate would have no jurisdiction to take cognizance of the said case.

. In order to ascertain whether any part of the cause of action has arisen within the jurisdiction of this Court it would necessary to refer to the complaint. I have carefully perused the complaint. In the said complaint, in para 1, 4 and 9 it is stated thus:-

> "1. I am the Managing Director of North Star Gems (India) Ltd., a company incorporated under the Companies Act, 1956 having its Registered Office at 23, Anupam Apartment, St. Francis Cross Road, Vile Parle (W), Bombay 400 056 (hereinafter referred to as "the said compnay") I am filing this complaint for and on behalf of the said company. I am duly authorised to file this complaint by Resolution dated 11.03.1997 passed by the Board of Directors. I crave leave to rely on the said Resolution, when produced.

4. On 29th November, 1995 in the meeting of its Board of Directors at 48-B, Gordhandas Building, 3rd Floor, Raja Ram Mohan Roy Road, Mumbai 400 004 it was resolved that the said Company do open Bank accounts with the Ahmedabad Branch of the Accused No.1 and do appoint the Accused No.1 as the collecting Bank to receive the call money (i.e. balance price payable) for the subscribed shares of the Company.

9. In the third week of December 1995 the accused No.5 and 6 came to the office premises of the company at Girgaum, Bombay 400 004 and represented to me that the accused were aware of Companies with sound financial base who required short term finance and that it would be beneficial for my company to give Inter Corporate Deposit from the funds lying with the accused No.1. The said accused represented that high returns to the extent of 18% p.a. were expected from the I.C.D. It was further represented that the deposit were to be given only against execution of usual loan agreement, personal guarantees of Director, post

dated cheques and promissory notes and that thus there was hardly any risk for my company. The said Accused also represented that even they were ready to give personal guarantee if the Deposits were given to companies referred by them. Relying on the aforesaid representations and assurances of the said Accused, I in principal accepted their proposal and requested them to negotiate the deals with the proposed borrowers and to cause draft documentation to be made. To enable the said works to proceed on the request of the accused No.5, I signed 4 blank letterheads of the company and entrusted the same to the accused on the explicit understanding that the accused No.6 would not use the same without informing me of the proposed contents of the letter and that immediately on issuance of any letter, xerox copy of the same should be forwarded to me. It was further explicitly understood between me and the said accused that no Deposits would be given without a final meeting between me AND the Borrower and without the resolution of the Board of Directors. It may be noted that neither of the said

accused Nos. 5 and/or 6 were empowered to give deposit or execute the documents relating to the proposed Deposits."

7. On perusal of these paragraphs, prima facie, it appears that part of the cause of action has arisen in Mumbai and as such in my opinion this Court has jurisdiction and the Mumbai police would have jurisdiction to investigate the matter. Thus the decision in the case of Navinchandra N. Majithia (supra) would be of no help to the petitioner as in the present case if the allegations in the F.I.R. are taken at their face value it cannot be said that no part of the cause of action has arisen in Mumbai. Moreover, most of the depositors are from Mumbai, the head office of the complainant is at Mumbai and in such case the money relating to transactions would have to be transferred from the head office at Mumbai and, therefore, the complaint in question can be enquired into or tried by the Court in Mumbai. So also the fact that some part of the investigation has to be conducted at Mumbai itself shows that the cause of action falls within the territorial limits of this Court and consequently the Mumbai police can investigate the matter. It may be stated here that after the learned Magistrate passed the order dated

19.4.2000, investigation of this case came to be transferred to Crime Branch, E.O.W. Mumbai vide MECR No. 20/2000 dated 24.8.2000. Thereafter some of the accused persons came to be arrested. However, as the investigation came to be stayed the said persons came to be granted bail and investigation came to a standstill.

8. The learned advocate for the petitioner has also placed reliance on the decision of Full Bench of this Court in the case of **re Jivandas Savchand reported in AIR 1930 Bombay 490.** In the said decision it is observed that the venue of the trial is determined by Section 181(2). It may be noted that the old Section 181(2) of Cr.P.C. corresponds to the present section 181(4) of Cr.P.C.

. Section 181(4) reads as under:-

Sec. 181(1) : .....

Sec. 181(2) : .....

Sec. 181(3) : .....

Sec.181(4): Any offence of criminal misappropriation or of criminal

> breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

. First of all Section 181 (4) of Cr.P.C. covers an offence of Criminal misappropriation or of criminal breach of trust and the present case is not limited to only these offences. The present case is also under section 420 and 471 of I.P.C. Thus, this decision is also of no use to the petitioner.

9. Thereafter reliance has been placed by the learned advocate for the petitioner on the decision in the case of **S.R. Sharma Vs. The State of West Bengal reported in 1993 Cri.L.J. 831**. In the said case it is observed that when the offence of criminal breach of trust is committed, money so received, retained and misappropriated by the accused at place where branch office was situated

the accused was not liable to account for it, at head office and court at place of branch office has jurisdiction to try offence. Mr. Shah has submitted that in the present case the Branch office is at Ahmedabad. Money was received, retained and misappropriated at Ahmedabad and hence, this Court would have no jurisdiction. In the case of S.R. Sharma (supra) the case was being decided in view of section 181(4) of Cr.P.C. As stated earlier, in the present case the complaint is not restricted only to offence of criminal breach of trust or criminal misappropriation but other offences like forgery and cheating are also involved in the present case. Moreover, money has been invested by various depositors who are in Mumbai. This money has been transferred to Ahmedabad and looking to para 1, 4 and 9 of the complaint, it cannot be said that no part of the cause of action has arisen in Mumbai. Moreover, the resolution dated 29.11.95 passed by the North Star Gems (India) Ltd. of which the complainant is the Chairman and Managing Director, shows that the petitioner was authorised to operate the current account of Bank of Madurai at Ahmedabad and to sigh cheques on behalf of the company till further notice is given by the company and meeting in respect of the said resolution and the resolution was passed in Mumbai.

10. Shri. Naik the learned advocate for the respondent No.1 i.e. original complainant and Shri. Shitole, the learned A.P.P. for respondent No.2-State have placed reliance on the decision of the Supreme Court in the case of **Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) & Anr reported in 1999(4) Crimes 157 (SC).** In the said case the complaint was lodged at Patiala by the complainant wife against her husband and in-laws. Thereafter, she came to Delhi where she received threats from her husband. Thereafter the complainant wife lodged her complaint at Delhi also. The husband filed a petition in the High Court for quashing the F.I.R. registered at Delhi on the ground that no cause of action for investigation of trial arose within Delhi. The High Court quashed the F.I.R. on the ground that the investigating Officer at Delhi did not have territorial jurisdiction. The said order was challenged before the Supreme Court, the Supreme Court observed that the finding given by the High Court are, on the face of it, illegal because :-

(1) The S.H.O. has statutory authority under Section 156 of the Criminal Procedure Code to investigate any

cognizable case for which an F.I.R. is lodged.

(2) At the stage of investigation, there is no question of interference under Section 482 of the Criminal Procedure Code on the ground that the Investigating Officer has no territorial jurisdiction.

(3) After investigation is over, if the Investigating Officer arrives at the conclusion that the cause of action for lodging the F.I.R. has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly under Section 170 of the Criminal Procedure Code and to forward the case to the magistrate empowered to take cognizance of the offence.

Thereafter, in para 9 it is observed thus:-

"It is true that territorial jurisdiction also is prescribed under sub-section (1) to the

extent that the Officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to inquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 & 170. Section 170 specifically provides that if, upon an investigation, it appears to the Officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the investigating Officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then F.I.R. can be forwarded to the police

> station having jurisdiction over the area in which crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it."

. The learned Magistrate has placed reliance on the very same judgment and passed the impugned order dated 19.4.2000. From the decision in the case of Satvinder Kaur it is clear that the Mumbai Police can investigate the complaint lodged at Mumbai. It is further clear that at the stage of investigation there can be no question of interference on the ground that the Investigating Officer has no territorial jurisdiction.

11. In view of the observations of the Supreme Court in para 9, it is also clear that the police officer cannot refuse to investigate the case on the ground of jurisdiction as was done by the V.P. road police station in the present case. V.P. road police station recorded the statements of only a few of the witnesses and submitted their report. As the learned Magistrate was not satisfied with the said report he passed the order directing V.P. road police station to make further investigation and take necessary action as required under law.

The said order is perfectly just, legal and proper. Hence, no interference is called for. Writ petition is dismissed. Rule is discharged.

12. At this stage, the learned advocate for the petitioner states that the interim relief granted by this Court may be continued for the period of eight week. In view of the prayer, ad-interim relief to continue for a further period of eight weeks from today.

13. An authenticated copy of this judgment be supplied to the parties.